

United States Senate
WASHINGTON, DC 20510

September 15, 2023

VIA ELECTRONIC TRANSMISSION

The Honorable Shalanda Young
Director
Office of Management and Budget

Dear Director Young:

Government transparency is fundamental to good governance. Transparency yields accountability. The United States government generates vast amounts of information as federal agencies fulfill their missions and taxpayer dollars fund the collection and development of government data. Accordingly, taxpayers have the right to know what their government is doing.¹ The Freedom of Information Act (FOIA), as our nation's primary transparency law, has exposed government waste, fraud, and abuse that could've otherwise remained hidden from public scrutiny.

Recognizing the value and importance of open data traditionally accessed through the FOIA process, Congress enacted the Open, Public, Electronic and Necessary Government Data Act of 2018, (the "Act").² The Act is intended to provide a process for the federal government to quickly and efficiently release data to the public in useful formats. This Act directs agencies to make data assets available to the public, by default, using machine readable formats.³ Agencies are also required to develop comprehensive inventories of their data assets⁴ to develop a federal data catalogue.⁵ OMB is instructed to issue guidance to agencies on the implementation of the Act's open data and comprehensive data inventories requirements.⁶ This guidance is commonly referred to as "Phase II guidance."

It is unacceptable that OMB is over four years late issuing implementation guidance and reporting on agencies' compliance with an Act meant to increase transparency. OMB was required to issue portions of the guidance as far back as July 2019 to support agencies in meeting key requirements by January 2020. The Government Accountability Office (GAO) reported that in September 2021 OMB staff said that OMB had "yet to finalize ... [OPEN Government Data Act] guidance due to delays resulting from the ...COVID-19 pandemic."⁷ However, OMB should have issued guidance prior to the start of the COVID-19 pandemic. GAO also found that some agencies that worked on implementing the Act have not fully met the legal requirements, but they also did not have the OMB guidance to inform the

¹ GAO, *Open Data: Agencies Need Guidance to Establish Comprehensive Data Inventories; Information on Their Progress is Limited*, GAO-21-29, (Washington, D.C.: Oct. 8, 2020). "Public access to federal data [open data], that are free to use, modify, and share—hold[s] great promise for promoting government transparency, engendering public trust in government, and stimulating entrepreneurship, innovation, and economic activity."

² Foundations for Evidence-Based Policymaking Act 5 U.S.C. §§ 301-311

³ 44 U.S.C. § 3506(b)(6) as amended by OPEN Government Data Act, § 202(c)(1)(A)(iv).

⁴ *Id.* at § 3511

⁵ CRS, *The OPEN Government Data Act: A Primer*. IF12299, (Washington, D.C.: Dec, 29,2022).

⁶ 44 U.S.C. § 3511

⁷ GAO, *Open Data: Additional Action Required for Full Access*. GAO-22-104574. Washington, D.C.: December 16, 2021.

implementation.⁸ This underscores the importance of issuing complete and comprehensive guidance to support agencies, as Congress intended. In the meantime, as GAO has noted, OMB's delay issuing the guidance could lead to increased costs for agencies if they are required to revise their approaches to OPEN Government Data Act implementation after OMB releases the guidance.⁹

The OPEN Government Data Act is designed to make the government's data processes more efficient and transparent. Open data is mandated to be the default, and taking steps towards implementing this Act is long overdue.

Please respond to the following questions no later than September 28, 2023:

- 1) When does OMB plan to fulfill its mandated requirement to issue Phase II guidance for agencies to implement the OPEN Government Data Act?
- 2) In September 2020, OMB shared a draft of the Phase II guidance with members of the Chief Data Officers (CDO) Council. Has OMB processed comments obtained through this process and used them to inform its guidance? If not, why not?
- 3) Does OMB guidance acknowledge and incorporate other agencies' information resources management responsibilities and expertise, such as GSA's and NARA's, in ensuring that the OPEN Government Data Act is properly implemented, and take into account implementation issues such as data privacy? If not, why not?

I ask for your attention to this important matter. Should you have any questions, please contact my Budget Committee staff at (202) 224-0642.

Sincerely,



Charles E. Grassley
Ranking Member
U.S. Senate Budget Committee

⁸ GAO. *Open Data: Additional Action Required for Full Access*. GAO-22-104574. Washington, D.C.: December 16, 2021.

⁹ GAO. *Priority Open Recommendations: Office of Management and Budget*. GAO-22-105582. Washington, D.C.: July 15, 2022.